

Christopher W. Sweeney (Bar No. 143217)
LAW OFFICES OF CHRISTOPHER W. SWEENEY
1300 Oliver Road, Suite 300
Fairfield, CA 94534
Telephone: (707) 435-1244
Facsimile: (707) 435-1245
cwslaw@comcast.net

Attorneys for Plaintiff
KEEZIO GROUP LLC,
a California limited liability company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KEEZIO GROUP, LLC, a California
limited liability company

Plaintiff,

v.

SLUMBERPOD, LLC, a Delaware
limited liability company

Defendant.

Case No. 4:23-cv-06288-KAW

**KEEZIO GROUP, LLC's
ANSWER AND AFFIRMATIVE
DEFENSES TO FIRST
AMENDED COUNTERCLAIMS
OF DEFENDANT SLUMBERPOD
LLC**

DEMAND FOR JURY TRIAL

AND RELATED COUNTERCLAIMS

Plaintiff KEEZIO GROUP LLC, a California limited liability company (hereinafter “Plaintiff” or “KEEZIO”), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to the First Amended Counterclaims contained in the First Amended Answer of Defendant SLUMBERPOD LLC (hereinafter “Defendant” or “SlumberPod”) filed on October 11, 2024, as Docket No. 42 in this action (“the Counterclaims”), as follows:

GENERAL DENIAL

Except as otherwise expressly admitted herein, KEEZIO generally denies each and every allegation set forth in the Counterclaims and specifically denies any liability to Defendant SlumberPod. Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, allegations in the Counterclaims to which no responsive pleading is required shall be deemed denied.

PARTIES

1. Upon information and belief, Keezio is a limited liability company organized and existing under the laws of the State of California that is engaged in the business of selling products for children and new parents.

RESPONSE: KEEZIO admits that it is a limited liability company organized and existing under the laws of the State of California, engaged in the business of the design, manufacture, marketing, distribution, and sale of children’s products throughout the United States, including the State of California, County of Contra Costa. KEEZIO denies any remaining allegations in Paragraph 1 of the Counterclaims.

2. SlumberPod is a limited liability company organized and existing under the laws of the State of Delaware.

RESPONSE: KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 and based thereon denies them.

JURISDICTION

3. This Court has original jurisdiction pursuant to 15 U.S.C., 1121(a), 35 U.S.C. § 281 and 28 U.S.C. §§ 1331, 1332 and 1338(a).

RESPONSE: Paragraph 3 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO denies any allegations in Paragraph 3.

4. Venue in this district is proper pursuant to the provisions of Title 28, United States Code, Section 1391 and 1400.

RESPONSE: Paragraph 4 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO denies any allegations in Paragraph 4.

5. This Court has personal jurisdiction over Keezio because it is organized under the laws of the State of California, has its principal place of business located in this judicial district, does business in this judicial district and has voluntarily submitted itself to the jurisdiction of this Court in filing the complaint.

RESPONSE: Paragraph 5 states legal conclusions to which no response is

1 required. With respect to the Northern District of California, KEEZIO admits
2 that this Court has personal jurisdiction over KEEZIO. KEEZIO denies any
3 remaining allegations in Paragraph 5.
4

5 **DIVISIONAL ASSIGNMENT**

6
7 6. Assignment to this division in proper pursuant to Local Rule 3-2 (c)
8 and (e) because this action arises in the County of Contra Costa as a substantial
9 part of the events giving rise to these counterclaims occurred in the County of
10 Contra Costa and throughout this District.
11

12 **RESPONSE:** Paragraph 6 states legal conclusions to which no response is
13 required. To the extent this Paragraph makes any factual allegations, KEEZIO
14 denies any allegations in Paragraph 6.
15

16 **BACKGROUND FACTS**

17
18 7. The idea behind SlumberPod originated in later 2014 with one of its
19 founders and her husband were visiting her parents for the winter holidays. In
20 sharing a bedroom, their baby was woken up two nights in a row, and the baby
21 cried and would not go back to sleep as it saw its parents across the room. They
22 left a day early, as the baby could always get a good night's rest at home.
23
24
25
26

RESPONSE: KEEZIO lacks sufficient knowledge or information to form
a belief as to the truth of the allegations contained in Paragraph 8 and based
thereon denies them.

18 **RESPONSE:** KEEZIO lacks sufficient knowledge or information to form
19 a belief as to the truth of the allegations contained in Paragraph 9 and based
20 thereon denies them.
21

10. As a result of its tremendous success, SlumberPod and the
SlumberPod® Product were featured on ABC's Shark Tank (Season 11, Episode
10).

RESPONSE: KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 and based thereon denies them.

11. The SlumberPod® Product has been featured in widely recognized other publications and programs, such as Women's Health, Good Morning America, Motherly, Conde Naste Traveler, Forbes and Business Insider.

RESPONSE: KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 and based thereon denies them.

12. Today, the SlumberPod product enjoys tremendous success on Amazon and sales via SlumberPod's website, as well as through various retail channels, including Target.

RESPONSE: KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 and based thereon denies them.

13. In recognition of the uniqueness of the SlumberPod Product, SlumberPod was awarded and owns, among others, U.S. Patent No. 11,617,450 (the “‘450 Patent”). A true and accurate copy of the ‘450 Patent is attached hereto as Exhibit A.

RESPONSE: KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 and based thereon denies them.

RESPONSE: Paragraph 15 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 and based thereon denies them.

- 7 -

RESPONSE: Paragraph 17 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17 and based thereon denies them.

RESPONSE: Paragraph 18 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18 and based thereon denies them.

RESPONSE: Paragraph 19 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO

20. SlumberPod marks its products incorporating the disclosure claimed in the '450 Patent under the patent marking statute, including 35 U.S.C. §287.

RESPONSE: Paragraph 20 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 and based thereon denies them.

21. SlumberPod marks its products incorporating the disclosure claimed in the '381 Patent under the patent marking statute, including 35 U.S.C. §287.

RESPONSE: Paragraph 21 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 and based thereon denies them.

22. SlumberPod marks its products incorporating the SLUMBERPOD® mark under the trademark marking statute, including 15 U.S.C. §1111.

RESPONSE: Paragraph 22 states legal conclusions to which no response is required. To the extent this Paragraph makes any factual allegations, KEEZIO lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 and based thereon denies them.

KEEZIO'S INFRINGING ACTS

23. Keezio has introduced its Hiccapop DayDreamer Blackout Tent for Pack 'n Play (the "DayDreamer Product"), which infringes at least claim 1 of the '450 Patent and claim 1 of the '381 Patent.

RESPONSE: KEEZIO admits that it has introduced an anytime-anywhere blackout tent that fits over most playards, inflatable toddler beds, toddler cots and mini cribs, known as the "Hiccapop DayDreamer Blackout Tent for Pack 'n Play" ("DayDreamer"). KEEZIO denies any remaining allegations in this Paragraph.

24. A true and accurate printout from the Keezio's website (www.hiccapop.com) showing the DayDreamer Product is attached as Exhibit D.

RESPONSE: KEEZIO admits that Exhibit D to the Counterclaims purports to contain materials printed from KEEZIO's website. KEEZIO denies any remaining allegations in this Paragraph.

25. A true and accurate printout from the Keezio's Amazon listing showing the DayDreamer Product is attached as Exhibit E.

RESPONSE: KEEZIO admits that Exhibit E to the Counterclaims purports to contain materials printed from the Amazon website. KEEZIO denies any remaining allegations in this Paragraph.

26. The DayDreamer Product is intended to compete directly with the SlumberPod Product.

RESPONSE: Denied.

27. In launching the DayDreamer Product, Keezio transmitted marketing materials to its customers and other potential customers on or around November 26, 2023. These e-mails describe the DayDreamer Product as having “slumber pod breathable fabric.” A true and accurate copy of this e-mail sent by Keezio is attached as Exhibit F.

RESPONSE: KEEZIO admits that Exhibit F to the Counterclaims purports to contain email(s) from KEEZIO. KEEZIO denies any remaining allegations in this Paragraph.

COUNT I – INFRINGEMENT OF THE ‘450 PATENT

28. Plaintiff incorporates by reference the averments contained in paragraphs 1 through 26 of its Counterclaims.

RESPONSE: KEEZIO repeats and realleges its response to the foregoing Paragraphs as though fully set forth herein.

29. Keezio manufactures, uses, sells, offers to sell, and/or imports into the United States and this Judicial District the DayDreamer product that directly infringes the ‘450 Patent, including at least claim 1 thereof.

RESPONSE: Denied.

30. An exemplary claim chart detailing the basis for SlumberPod's accusation that the DayDreamer Product infringes claim 1 of the '450 Patent is attached as Exhibit G.

RESPONSE: Denied.

31. On information and belief, Keezio has acted willfully, intentionally and deliberately in derogation of SlumberPod's rights.

RESPONSE: Denied.

32. SlumberPod has been damaged by Keezio's infringement and will suffer irreparable injury unless Keezio is permanently enjoined by this Court.

RESPONSE: Denied.

COUNT II – INFRINGEMENT OF THE '381 PATENT

33. Plaintiff incorporates by reference the averments contained in paragraphs 1 through 31 of its Counterclaims.

RESPONSE: KEEZIO repeats and realleges its response to the foregoing Paragraphs as though fully set forth herein.

34. Keezio manufactures, uses, sells, offers to sell, and/or imports into the United States and this Judicial District the DayDreamer product that directly infringes the '381 Patent, including at least claim 1 thereof.

RESPONSE: Denied.

1 35. An exemplary claim chart detailing the basis for SlumberPod's
2 accusation that the DayDreamer Product infringes claim 1 of the '381 Patent is
3 attached as Exhibit G.

4
5 **RESPONSE:** Denied.

6 36. On information and belief, Keezio has acted willfully, intentionally
7 and deliberately in derogation of SlumberPod's rights.

8
9 **RESPONSE:** Denied.

10 37. SlumberPod has been damaged by Keezio's infringement and will
11 suffer irreparable injury unless Keezio is permanently enjoined by this Court.

12
13 **RESPONSE:** Denied.

14 **COUNT III – FEDERAL AND COMMON LAW TRADEMARK**
15 **INFRINGEMENT**

16 38. SlumberPod incorporates by reference the averments contained in
17 paragraphs 1 through 36.

18
19 **RESPONSE:** KEEZIO repeats and realleges its response to the foregoing
20 Paragraphs as though fully set forth herein.

21 39. Keezio's unauthorized use of the SlumberPod mark in its advertising
22 and in conjunction with its competitive canopy products is confusingly similar to
23 SlumberPod's use of the SlumberPod® mark in conjunction with its sale of the
24 SlumberPod Product.
25
26

1 **RESPONSE:** Denied.

2 40. Keezio's use of the SlumberPod mark is likely to cause confusion or
3 mistake or to deceive consumers into believing that Keezio's unauthorized
4 products advertised, promoted, and offered in conjunction with the SlumberPod
5 mark are sponsored, licensed or authorized by, or affiliated, connected or
6 otherwise associated with SlumberPod.
7

8 **RESPONSE:** Denied.

9 41. The acts of Keezio complained of herein are likely to cause
10 confusion, mistake, or deception as to origin, sponsorship or approval and
11 therefore constitute Federal and common law trademark infringement in violation
12 of Section 32 of the Lanham Act, 15 U.S.C. § 1114 *et seq.* and the common law.
13
14

15 **RESPONSE:** Denied.

16 **COUNT III – UNFAIR COMPETITION**
17

18 42. SlumberPod incorporates by reference the averments contained in
19 paragraphs 1 through 40.
20

21 **RESPONSE:** KEEZIO repeats and realleges its response to the foregoing
22 Paragraphs as though fully set forth herein.
23

24 43. Keezio's unauthorized use of the SlumberPod mark is likely to cause
25 confusion or mistake or to deceive consumers into believing that Keezio's
26 unauthorized products advertised, promoted, and offered under the SlumberPod
27

mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with SlumberPod.

RESPONSE: Denied.

44. The acts of Keezio complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

RESPONSE: Denied.

PRAYER FOR RELIEF

Paragraphs A through L on Pages 24 -26 of the Counterclaims set forth SlumberPod's prayer for relief to which no response is required.

Plaintiff KEEZIO denies that Defendant SlumberPod is entitled to any relief whatsoever as prayed or otherwise.

Plaintiff KEEZIO denies each and every allegation of the Counterclaims not already admitted or denied and further denies that Defendant SlumberPod is entitled to any relief whatsoever from Plaintiff on the basis of any of the purported claims for relief contained in the Counterclaims.

COUNTERCLAIM'S DEMAND FOR JURY TRIAL

Defendant SlumberPod's demand for a trial by jury on all issues does not require a response.

//

//

//

AFFIRMATIVE DEFENSES

Plaintiff KEEZIO alleges and asserts the following defenses in response to the allegations in the Counterclaims, undertaking the burden of proof only as to those defenses deemed “affirmative” by law, regardless of how such defenses are denominated herein.

FIRST DEFENSE
(Non-Infringement)

KEEZIO has not infringed and does not infringe, directly or indirectly, any purportedly valid and enforceable claim of the patent-in-suit or any trademark(s) alleged in the Counterclaims.

SECOND DEFENSE
(Invalidity)

Each asserted claim of the patent alleged in the Counterclaims (the “patent-in-suit”) is invalid for failure to comply with one or more requirements of Title 35, United States Code, including without limitation the provisions of 35 U.S.C. §§ 101, 102, 103, 112 and 132, and the rules, regulations, and laws pertaining thereto.

THIRD DEFENSE
(Prosecution History Estoppel)

Upon information and belief, by reason of prior art and the proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications

1 that led to the issuance of the patent-in-suit, including, without limitation,
2 amendments, representations, concessions, and admissions made by or on behalf
3 of the applicant, Defendant SlumberPod is estopped from asserting that the
4 patent-in-suit covers and includes any KEEZIO products or services alleged to
5 infringe the patent-in-suit.
6

7
8 **FOURTH DEFENSE**
9 **(Waiver, Estoppel, Laches, and Acquiescence)**

10 Defendant SlumberPod's claims are barred, in whole or in part, by the
11 equitable doctrines of waiver, estoppel, laches and/or acquiescence, and/or other
12 equitable doctrines.
13

14 **FIFTH DEFENSE**
15 **(Limitation on Damages)**

16 Defendant SlumberPod's claims for recovery are barred, in whole or in
17 part, by 35 U.S.C. § 287.

18 **SIXTH DEFENSE**
19 **(Limitation on Damages)**

20 Under the provisions of 35 U.S.C. § 286, Defendant SlumberPod is
21 precluded from seeking recovery for any of KEEZIO's alleged infringing acts
22 occurring more than six years before the filing of the COUNTERCLAIMS.
23

24
25 //

26 //

SEVENTH DEFENSE
(Action Including an Invalid Claim and Limitation on Recovery of Costs)

Defendant SlumberPod's prayer for costs is barred, in whole or in part, by Defendant SlumberPod's failure to disclaim any invalid claims under 35 U.S.C. § 288.

EIGHTH DEFENSE
(No Willful Infringement)

KEEZIO has not willfully infringed and is not willfully infringing, any purportedly valid and enforceable claim of the patent-in-suit. Defendant SlumberPod is not entitled to seek enhanced damages or attorneys' fees for willful infringement.

NINTH DEFENSE
(Failure to State a Claim)

Defendant SlumberPod fails to state a claim upon which relief may be granted.

TENTH DEFENSE
(Good Faith)

KEEZIO has engaged in all relevant activities in good faith, thereby precluding Defendant SlumberPod, even if it prevails, from proving that this is an exceptional case justifying a recovery of its reasonable attorneys' fees and/or costs under 35 U.S.C. § 285.

ELEVENTH DEFENSE
(No Injunctive Relief)

Defendant SlumberPod is not entitled to any injunctive relief because,

among other reasons, any alleged injury is not immediate or irreparable, and Defendant SlumberPod has an adequate remedy at law for any alleged injury.

TWELFTH DEFENSE
(Patent Misuse)

Counter-Plaintiff/Defendant SlumberPod has engaged in patent misuse by enforcing and/or attempting to enforce patent rights that exceed the scope of any patent rights granted in one or more of its awarded patents.

THIRTEENTH DEFENSE
(Trademark Descriptive Fair Use)

Any use of language by Plaintiff/Counter-Defendant KEEZIO constitutes trademark descriptive fair use as such was proper fair use of language in its generic and/or general descriptive sense.

FOURTEENTH DEFENSE
(Trademark Nominative Use)

Any use by Plaintiff/Counter-Defendant KEEZIO of alleged trademarks of Counter-Plaintiff/Defendant SlumberPod was proper nominative use.

FIFTEENTH DEFENSE
(Preemption)

Counter-Plaintiff SlumberPod's unfair competition claims are preempted by relevant federal law.

OTHER AFFIRMATIVE DEFENSES RESERVED

KEEZIO's investigation of the claims and its defenses is continuing. In addition to the defenses set forth herein, KEEZIO expressly reserves the right to amend its Answer to allege and assert any additional defenses and counterclaims or to supplement its existing defenses under Rule 8 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, KEEZIO denies that Defendant SlumberPod is entitled to any relief, including the relief requested in the COUNTERCLAIMS's Prayer for Relief. KEEZIO respectfully requests that the Court enter a judgment against Defendant SlumberPod and in favor of KEEZIO as follows:

- A. That Defendant SlumberPod takes nothing and be denied relief whatsoever;
- B. That the COUNTERCLAIMS be dismissed on the merits and with prejudice;
- C. That the claims of the patent-in-suit and the trademarks be declared to be not infringed by KEEZIO;
- D. That the asserted claims of the patents-in-suit be declared to be invalid and/or unenforceable;
- E. That KEEZIO be awarded its costs incurred in connection with this action;

F. That this case be deemed exceptional pursuant to 35 U.S.C. § 285, and 15 U.S.C. § 1117(a) such that KEEZIO be awarded reasonable attorneys' fees and expenses; and

G. That KEEZIO be awarded such other and further relief as the Court may deem just and proper.

Dated: October 31, 2024

LAW OFFICES
OF CHRISTOPHER W. SWEENEY

/s/ Christopher W. Sweeney

By: Christopher W. Sweeney
Attorney for Plaintiff
KEEZIO GROUP LLC

DEMAND FOR JURY TRIAL

Plaintiff KEEZIO GROUP LLC demands a trial by jury as to all claims and issues properly triable thereby.

Dated: October 31, 2024

LAW OFFICES OF
CHRISTOPHER W. SWEENEY

/s/ Christopher W. Sweeney

By: Christopher W. Sweeney
Attorney for Plaintiff
KEEZIO GROUP LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon all parties registered for electronic notification via the Court's electronic filing system on October 31, 2024.

Dated: October 31, 2024

/s/ Christopher W. Sweeney